IN THE HIGH COURT OF JUDICATURE AT BOMBAY
ORIGINAL SIDE

WRIT PETITION NO.2957 OF 2004

1. M/s.M.Shailesh & Co. & anr. Petitioner
vs.
Union of India & ors. Respondents

Mr.B.V.Jhaveri for the petitioner.

Mr.R.V.Desai, senior counsel with Ms. S.V. Bharucha i/b.
Mr.P. Kapur for the respondents.

CORAM : R. M. LODHA &
J.P. DEVADHAR,JJ.

DATED : 2nd November 2004

P.C.

Heard Mr.B.V.Jhaveri, the learned counsel for the petitioner and Mr.R.V.Desai, the learned senior counsel for the revenue.

2. Rule.

3. Returnable forthwith.

4. The advocate for the revenue waives service for the respondents.

5. Rule is treated on board for final hearing at this stage.

6. Having considered the available material and all the

aspects, we are of the view that the application made by the petitioner seeking extension under Section 80HHC(2)(a) of the Income Tax Act for realisation of outstanding export proceeds requires reconsideration by the Commissioner of Income Tax, Mumbai-XVI, Mumbai. It is so because it is apparent from the particulars available on record that the payment had been received, though belatedly, from the concerned parties.

7. The petitioner in the application seeking extension of time under Section 80HHC(2)(a) for realisation of outstanding export proceeds set out the ground that delay was beyond their control like financial difficulties and credit squeeze world over, locking up of funds in slow moving inventories, uncertain economic and political environment, acute decline and recessionary trend in business world over particularly in diamond line. In the application, the petitioner stated that they have been pursuing the foreign buyers to remit the balance proceeds of the invoices nos. 17/96-97, 19/96-97, 20/96-97, 21/96-97, 26/96-97, 27/96-97 and 28/96-97 dated 07.11.96, 19.11.96, 14.01.97, 20.01.97, 21.02.97, 08.03.97 and 14.03.97 respectively on their own as well as through their bankers and they sent telex, fax and other messages and talked personally for remittance of the foreign currency by buyers under the said invoices.

8. We find that the Commissioner over- stretched the matter by observing that there was no evidence that the assessee took legal steps to enforce recovery. The efforts made by the petitioner suggest that but for the reasons beyond the petitioner's control, realisation of foreign currency would have been made within time.

9. We, accordingly, set aside the order dated 25th March 2004 impugned in the present writ petition and direct the Commissioner of Income Tax, Mumbai city XVI, Mumbai to reconsider the petitioner's application dated 29th September 1997 seeking extension under Section 80HHC(2)(a) in accordance with law.

10. As regards the challenge to the notice under Section 148 of the Income Tax Act, liberty to the petitioner to apply to the concerned Assessing Officer for appropriate order in the light of this order.

11. Rule is made absolute in the aforesaid terms.

12. No costs.

(R.M. LODHA,J.)

(J.P. DEVADHAR,J.)